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In re Application of GALLAGHER
U.S. Application No.: 09/744,818
Int. Application No.: PCT/GB99/02160
Int. Filing Date: 06 July 1999
Priority Date: 15 July 1998
Attorney Docket No.: 922-122
For: DIAGNOSTIC SENSOR

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicant's "Petition Under Rule 1.137(b) to Revive Unintentionally Abandoned Application" filed 30 January 2001.

BACKGROUND

On 06 July 1999, applicant filed international application PCT/GB99/02160, which claimed priority of an earlier United Kingdom application filed 15 July 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 27 January 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 14 February 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 January 2001 (15 January 2001 was a holiday).

International application PCT/GB99/02160 became abandoned as to the United States at midnight on 16 January 2001 for failure to pay the basic national fee.

On 30 January 2001, applicant filed the present petition. The petition states that it is accompanied by a proper response under 35 U.S.C. 371, the petition fee set forth in 37 CFR 1.17(m), and a statement that "the delay in prosecuting this case (i.e. filing the declaration and paying the filing fee) was unintentional."

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless

previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), the petition states, "The delay in prosecuting this case (i.e. filing the declaration and paying the filing fee) was unintentional." This statement is interpreted as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

Having satisfied items (1)-(4) above, the petition under 37 CFR 1.137(b) is GRANTED.

This application has an international filing date of 06 July 1999 and a date under 35 U.S.C. 371 of 30 January 2001.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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